



General Assembly

January Session, 2009

Amendment

LCO No. 9231

HB0593409231HDO

Offered by:

REP. ROY, 119th Dist.
SEN. MEYER, 12th Dist.
REP. MUSHINSKY, 85th Dist.
REP. WILLIS, 64th Dist.
REP. O'ROURKE, 32nd Dist.
REP. BACKER, 121st Dist.
REP. MILLER L., 122nd Dist.
SEN. PRAGUE, 19th Dist.

REP. URBAN, 43rd Dist.
REP. HENNESSY, 127th Dist.
REP. HORNISH, 62nd Dist.
REP. BYE, 19th Dist.
REP. CAMILLO, 151st Dist.
REP. LAMBERT, 118th Dist.
REP. WOOD, 141st Dist.

To: Subst. House Bill No. **5934**

File No. 955

Cal. No. 327

**"AN ACT CONCERNING PRESERVING NATURAL VEGETATION
NEAR WETLANDS AND WATERCOURSES."**

1 Strike everything after the enacting clause and substitute the
2 following in lieu thereof:

3 "Section 1. Section 22a-38 of the general statutes is repealed and the
4 following is substituted in lieu thereof (*Effective October 1, 2009*):

5 As used in sections 22a-36 to 22a-45a, inclusive, and section 3 of this
6 act:

- 7 (1) "Commissioner" means the Commissioner of Environmental
8 Protection;
- 9 (2) "Person" means any person, firm, partnership, association,
10 corporation, limited liability company, company, organization or legal
11 entity of any kind, including municipal corporations, governmental
12 agencies or subdivisions thereof;
- 13 (3) "Municipality" means any town, consolidated town and city,
14 consolidated town and borough, city and borough;
- 15 (4) "Inland wetlands agency" means a municipal board or
16 commission established pursuant to and acting under section 22a-42;
- 17 (5) "Soil scientist" means an individual duly qualified in accordance
18 with standards set by the federal Office of Personnel Management;
- 19 (6) "Material" means any substance, solid or liquid, organic or
20 inorganic, including, but not limited to soil, sediment, aggregate, land,
21 gravel, clay, bog, mud, debris, sand, refuse or waste;
- 22 (7) "Waste" means sewage or any substance, liquid, gaseous, solid or
23 radioactive, which may pollute or tend to pollute any of the waters of
24 the state;
- 25 (8) "Pollution" means harmful thermal effect or the contamination or
26 rendering unclean or impure of any waters of the state by reason of
27 any waste or other materials discharged or deposited therein by any
28 public or private sewer or otherwise so as directly or indirectly to
29 come in contact with any waters;
- 30 (9) "Rendering unclean or impure" means any alteration of the
31 physical, chemical or biological properties of any of the waters of the
32 state, including, but not limited to change in odor, color, turbidity or
33 taste;
- 34 (10) "Discharge" means the emission of any water, substance or
35 material into waters of the state whether or not such substance causes

36 pollution;

37 (11) "Remove" includes, but shall not be limited to drain, excavate,
38 mine, dig, dredge, suck, bulldoze, dragline or blast;

39 (12) "Deposit" includes, but shall not be limited to, fill, grade, dump,
40 place, discharge or emit;

41 (13) "Regulated activity" means any operation within or use of a
42 wetland or watercourse involving removal or deposition of material,
43 or any obstruction, construction, alteration or pollution, of such
44 wetlands or watercourses, but shall not include the specified activities
45 in section 22a-40;

46 (14) "License" means the whole or any part of any permit, certificate
47 of approval or similar form of permission which may be required of
48 any person by the provisions of sections 22a-36 to 22a-45a, inclusive;

49 (15) "Wetlands" means land, including submerged land, not
50 regulated pursuant to sections 22a-28 to 22a-35, inclusive, which
51 consists of any of the soil types designated as poorly drained, very
52 poorly drained, alluvial, and floodplain by the National Cooperative
53 Soils Survey, as may be amended from time to time, of the Natural
54 Resources Conservation Service of the United States Department of
55 Agriculture;

56 (16) "Watercourses" means rivers, streams, brooks, waterways,
57 lakes, ponds, marshes, swamps, bogs and all other bodies of water,
58 natural or artificial, vernal or intermittent, public or private, which are
59 contained within, flow through or border upon this state or any
60 portion thereof, not regulated pursuant to sections 22a-28 to 22a-35,
61 inclusive. Intermittent watercourses shall be delineated by a defined
62 permanent channel and bank and the occurrence of two or more of the
63 following characteristics: (A) Evidence of scour or deposits of recent
64 alluvium or detritus, (B) the presence of standing or flowing water for
65 a duration longer than a particular storm incident, and (C) the
66 presence of hydrophytic vegetation;

67 (17) "Natural vegetation" means naturally occurring shrubs, trees or
68 other plants, but does not include lawns or manicured grass areas;

69 [(17)] (18) "Feasible" means able to be constructed or implemented
70 consistent with sound engineering principles; and

71 [(18)] (19) "Prudent" means economically and otherwise reasonable
72 in light of the social benefits to be derived from the proposed regulated
73 activity provided cost may be considered in deciding what is prudent
74 and further provided a mere showing of expense will not necessarily
75 mean an alternative is imprudent.

76 Sec. 2. Subsection (a) of section 22a-40 of the general statutes is
77 repealed and the following is substituted in lieu thereof (*Effective*
78 *October 1, 2009*):

79 (a) The following operations and uses shall be permitted in
80 wetlands and watercourses, as of right:

81 (1) Grazing, farming, as described in section 1-1, nurseries,
82 gardening [and harvesting of crops] and farm ponds of three acres or
83 less essential to the farming operation, and activities conducted by, or
84 under the authority of, the Department of Environmental Protection
85 for the purposes of wetland or watercourse restoration or
86 enhancement or mosquito control. The provisions of this subdivision
87 shall not be construed to include road construction or the erection of
88 buildings not directly related to the farming operation, relocation of
89 watercourses with continual flow, filling or reclamation of wetlands or
90 watercourses with continual flow, clear cutting of timber except for the
91 expansion of agricultural crop land, the mining of top soil, peat, sand,
92 gravel or similar material from wetlands or watercourses for the
93 purposes of sale;

94 (2) A residential home [(i)] (A) for which a building permit has been
95 issued, or [(ii)] (B) on a subdivision lot, provided the permit has been
96 issued or the subdivision has been approved by a municipal planning,
97 zoning or planning and zoning commission as of the effective date of

98 promulgation of the municipal regulations pursuant to subsection (b)
99 of section 22a-42a or as of July 1, 1974, whichever is earlier, and further
100 provided no residential home shall be permitted as of right pursuant
101 to this subdivision unless the permit was obtained on or before July 1,
102 1987;

103 (3) Boat anchorage or mooring;

104 (4) Uses incidental to the enjoyment and maintenance of residential
105 property, such property defined as equal to or smaller than the largest
106 minimum residential lot site permitted anywhere in the municipality,
107 provided in any town, where there are no zoning regulations
108 establishing minimum residential lot sites, the largest minimum lot site
109 shall be two acres. Such incidental uses shall include maintenance of
110 existing structures and landscaping but shall not include removal or
111 deposition of significant amounts of material from or onto a wetland
112 or watercourse or diversion or alteration of a watercourse;

113 (5) Construction and operation, by water companies as defined in
114 section 16-1 or by municipal water supply systems as provided for in
115 chapter 102, of dams, reservoirs and other facilities necessary to the
116 impounding, storage and withdrawal of water in connection with
117 public water supplies except as provided in sections 22a-401 and 22a-
118 403; and

119 (6) Maintenance relating to any drainage pipe which existed before
120 the effective date of any municipal regulations adopted pursuant to
121 section 22a-42a or July 1, 1974, whichever is earlier, provided such pipe
122 is on property which is zoned as residential but which does not
123 contain hydrophytic vegetation. For purposes of this subdivision,
124 "maintenance" means the removal of accumulated leaves, soil, and
125 other debris whether by hand or machine, while the pipe remains in
126 place."

127 Sec. 3. (NEW) (*Effective October 1, 2009*) (a) Except as provided in
128 subsection (b) of this section, when considering an application for a
129 proposed regulated activity, a municipal inland wetlands agency shall

130 not allow the destruction of natural vegetation within (1) one hundred
 131 feet of a wetlands or watercourse, or (2) the distance around the
 132 wetlands or watercourse regulated by the municipality pursuant to
 133 subsection (f) of section 22a-42a of the general statutes if such distance
 134 is less than one hundred feet from such wetlands or watercourse.

135 (b) A municipal inland wetlands agency shall allow the removal of
 136 natural vegetation in connection with a proposed regulated activity if
 137 (1) the applicant can demonstrate that the removal will have no likely
 138 impact or effect on the physical characteristics of such wetlands or
 139 watercourse, or (2) there is no feasible or prudent alternative to the
 140 removal, provided such proposed activity meets all other permitting
 141 requirements and applicable provisions of chapter 440 of the general
 142 statutes.

143 (c) The provisions of this section shall not apply to construction
 144 activities that are ancillary to existing residential uses, including, but
 145 not limited to, the construction of structures such as decks,
 146 outbuildings, fences or walkways, provided any natural vegetation in
 147 proximity to the activity is protected or restored to the maximum
 148 extent practicable. Any such construction activities shall be subject to
 149 all other permitting requirements and applicable provisions of chapter
 150 440 of the general statutes.

151 (d) The as of right uses specified in section 22a-40 of the general
 152 statutes, as amended by this act, shall be permitted in areas of natural
 153 vegetation located within the distance around the wetlands or
 154 watercourse regulated by the municipality in accordance with
 155 subsection (a) of this section."

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2009	22a-38
Sec. 2	October 1, 2009	22a-40(a)
Sec. 3	October 1, 2009	New section